

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

TYRONE DONOVAN JACOBS,

Plaintiff,

v.

LEUTENANT ANDUJAR,

Defendant.

Civil Action  
No. 22-1205 (CPO) (MJS)

**ORDER**

**O’HEARN, District Judge.**

Before the Court is Defendant’s motion to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6). (ECF No. 19.) Defendant has raised, among other things, the affirmative defense of exhaustion. As the Court may consider matters outside of the pleadings, the Court will consider the issue of exhaustion in the context of summary judgment. Pursuant to *Paladino v. Newsome*, 885 F.3d 203 (3d Cir. 2018), district courts are required to provide additional notice and an opportunity to respond before deciding factual disputes, such as exhaustion, on summary judgment. Accordingly,

IT IS on this 19<sup>th</sup> day of October 2023,

**ORDERED** that the parties are NOTIFIED pursuant to *Paladino v. Newsome*, 885 F.3d 203 (3d Cir. 2018) and *Small v. Camden County*, 728 F.3d 265 (3d Cir. 2013), that the Court may resolve factual disputes regarding Plaintiff’s exhaustion of administrative remedies as part of Defendant’s summary judgment motion; and it is further

**ORDERED** that the parties shall submit supplemental briefing under *Paladino*, including any other evidence, such as affidavits or declarations, they wish the Court to consider on the exhaustion issue, or a letter advising that they do not wish file such supplemental materials, within 30 days of this Order; and it is further

**ORDERED** that the Clerk of the Court shall ADMINISTRATIVELY TERMINATE Defendant's motion, (ECF No. 19), pending receipt of the submissions discussed above; and it is further

**ORDERED** that the Clerk of the Court shall send a copy of this Order to Plaintiff by regular U.S. mail.

/s/ Christine P. O'Hearn  
**Christine P. O'Hearn**  
**United States District Judge**